CLERK'S COPY.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 114

LAWRENCE AMOS, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES OF AMERICA.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF SOUTH CAROLINA.

FILED MAY 21, 1919.

(27,142)

(27,142)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 388.

LAWRENCE AMOS, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES OF AMERICA.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRCT OF SOUTH CAROLINA.

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Judd & Detweiler (Inc.), Printers, Washington, D. C., November 1, 1919.

1 In the District Court of the United States for the Eastern District of South Carolina, March Term, 1919, Florence, South Carolina.

LAWRENCE AMOS, Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA, Defendant in Error.

Petition for Writ of Error.

To the Honorable H. A. M. Smith, Judge of said Court:

The Petition of the undersigned respectfully shows unto the Court:

That the Plaintiff in Error was placed upon trial at a regular term of said Court on the 8th day of March, 1919, under an indictment charging him with violation of Sections 3258, 3281, 3279 and 3296, Revised Statutes.

That the jury found the defendant not guilty on the first, second, third and fourth counts, and guilty on the fifth and sixth counts.

That the Plaintiff in Error hereby applies to this Honorable Court for a Writ of Error to the Supreme Court of the United States upon the Assignment of Errors hereto attached as a part hereof.

Wherefore: The plaintiff in Error prays that this Court grant a Writ of Error to the Supreme Court of the United States for the purpose of appealing and deciding the questions raised by the Assignment of Errors.

And your Petitioner will ever pray, etc.

LAWRENCE AMOS,
By LEE & MOISE,
As Attorneys.

Writ of error allowed 18 March, 1919.

HENRY A. M. SMITH,
U. S. Dist. Judge.

2 In the District Court of the United States for the Eastern District of South Carolina, March Term, 1919, Florence, South Carolina.

LAWRENCE AMOS, Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA, Defendant in Error.

Assignment of Errors.

It is respectfully submitted:

1. That his Honor erred in refusing to grant the Petition of the Plaintiff in Error to return private property unlawfully seized when said Petition was presented to the Court after the jury was sworn, but before any testimony was offered on the part of the Government, and when it appeared from the records of said Court in said case that the property so seized had been obtained by Revenue Officers of the Government during the search of the plaintiff's home and buildings within his curtilage, during the absence of the defendant, without having in their possession a search warrant describing the places to be searched and the property to be searched for; it being respectfully submitted that such procedure on the part of the officers of the Government was in violation of the rights of the Plaintiff in Error as guaranteed to him by the Fourth and Fifth Amendments of the Constitution of the United States, and in violation of Sections Sixteen and Seventeen of Article One of the Constitution of the State of South Carolina; it being respectfully submitted that said Petition was presented to the Court within time.

2. That his Honor erred in admitting the testimony of the witnesses for the Government, to-wit: P. J. Coleman and C. A. Rector, over the objection of the Plaintiff in Error when it appeared that their testimony was obtained by them in a search of the home and buildings within the curtilage of the Plaintiff in Error during
3 his absence, and without a search warrant or other authority, describing the places to be searched and the property to be searched for; it being respectfully submitted that such testimony was in violation of the rights of the Plaintiff in Error guaranteed to him by the Fourth and Fifth Amendments of the Constitution of the United States and by Sections Sixteen and Seventeen Article One of the Constitution of the State of South Carolina.

3. That his Honor erred in refusing the motion of the Plaintiff in Error to strike from the record of the case the testimony of the witnesses for the Government, to-wit: P. J. Coleman and C. A. Rector, after they had testified on cross-examination that the testimony offered by them, relating to parts of a still, mash, and spent beer and three bottles of contraband or blockade whiskey was property and evidence obtained by them in a search of the home of the Plain-

tiff in Error, and of the outbuildings within his curtilage, during his absence, without a Search Warrant, or other authority, describing the place or places to be searched and the property to be searched for; it being respectfully submitted that such testimony was inadmissible and in violation of the rights of the Plaintiff in Error guaranteed to him by the Fourth and Fifth Amendments to the Constitution of the United States and of sections Sixteen and Seventeen, Article One, of the Constitution of the State of South Carolina.

LEE & MOISE,
Attorneys for the Plaintiff in Error.

4 [Endorsed:] In the District Court of the U. S. for the Eastern District of the State of South Carolina. Lawrence Amos, Plaintiff in Error, vs. The United States of America, Defendant in Error. Petition for Writ of Error and Assignment of Errors. Filed March 18, 1919. Richard W. Hutson, Clerk U. S. Dist. Ct., S. C. Lee & Moise, 120-122 North Main Street, Sumter, S. C.

5 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the Honorable the Judge of the District Court of the United States for the Eastern District of South Carolina, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you or some of you, between The United States of America, Plaintiffs, against Lawrence Amos, Defendant, a manifest error has happened, to the great damage of the said Defendant, Lawrence Amos, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court of the United States at Washington, within forty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness The Honorable Edward D. White, Chief Justice of the United States, this eighteenth day of March, in the year of our Lord one thousand nine hundred and nineteen.

[Seal United States District Court, Eastern District So. Ca.]

RICHARD W. HUTSON,
Clerk of the District Court of the United States for the Eastern District of South Carolina.

Allowed by:
HENRY A. M. SMITH,
United States District Judge,
Eastern District South Carolina.

6 [Endorsed:] No. Roll —. United States of America, Eastern District of South Carolina, in the District Court. Lawrence Amos, Plaintiff in Error, against The United States, Defendant in Error. Writ of Error. —— ——, Solicitor. Entered on Journal, Page —. Filed 18 day of March, 1919. Rich. W. Hutson, C. D. C. U. S. E. Dist. S. C.

7 UNITED STATES OF AMERICA, ss:

The President of the United States to the United States of America, Greeting:

You are hereby cited and admonished to be and appear at the United States Supreme Court, to be holden at Washingtin, on the 22nd day of April, next, pursuant to a writ of error filed in the Clerk's Office of the District Court of the United States for the Eastern District of South Carolina, wherein Lawrence Amos, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the Judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Henry A. M. Smith, Judge of the District Court of the United States for the Eastern District of South Carolina, this eighteenth day of March, in the year of our Lord one thousand nine hundred and nineteen.

HENRY A. M. SMITH,
United States District Judge for
Eastern District of South Carolina.

8 [Endorsed:] No. Roll —. United States of America, Eastern District of South Carolina, in the District Court. Lawrence Amos, Plaintiff in Error, against The United States, Defendant in Error. Citation. —— ——, Solicitor. Entered on Journal, Page —. Filed 18 day of March, 1919. Rich. W. Hutson, C. D. C. U. S. E. Dist. S. C.

9 *Transcript of Record.*

Supreme Court of the United States.

No. —.

LAWRENCE AMOS, Plaintiff in Error,

versus

THE UNITED STATES OF AMERICA, Defendant in Error.

ERROR to the District Court of the United States for the Eastern District of South Carolina, at Charleston.

10 TRANSCRIPT OF RECORD.

Caption.

THE UNITED STATES OF AMERICA,
Eastern District of South Carolina, To wit:

In the District Court.

At a District Court of the United States for the Eastern District of South Carolina, begun and holden at the Courthouse, in the City of Florence, S. C., on the first Tuesday of March, being the fourth day of the same month, in the year of our Lord one thousand nine hundred and nineteen.

Present: The Honorable Henry A. M. Smith, United States Judge for the Eastern District of South Carolina.

Among others were the following proceedings, to wit:

11 *Indictment.*

Filed March 4th, 1919.

THE UNITED STATES OF AMERICA,
Eastern District of South Carolina:

In the District Court.

First Count, Sec. 3258, R. S. U. S.

At a stated Term of the District Court of the United States for the Eastern District of South Carolina, begun and holden at Florence within and for the District aforesaid, on the First Tuesday of March, in the year of our Lord one thousand nine hundred and nineteen, the Grand Jurors of the United States of America, within

and for the District aforesaid, upon their oaths respectively do present that Lawrence Amos, late of Marion County in the State of South Carolina, on the eleventh day of February, in the year of our Lord one thousand nine hundred and nineteen at Marion County, in the said State of South Carolina, in the said District, and within the jurisdiction of this Court, unlawfully did have in his possession and custody and under his control, a certain still and distilling apparatus set up, which said still and distilling apparatus was not regi-tered with the Collector of Internal Revenue of the District in which the said still and distilling apparatus was set up, as aforesaid, by subscribing and filing with the said Collector duplicate statements in writing, setting forth the particular place where such still and distilling apparatus was set up, the kind of still, its cubic contents, the owner thereof, his place of residence, and the purpose for which said still and distilling apparatus had been or was intended to be used, as required by law; contrary to the form of the Statute of the United States in such case made and provided, and against the peace and dignity of the United States.

Second Count, Sec. 3281, R. S. U. S.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present that Lawrence Amos, late of Marion County, in the State of South Carolina, on the eleventh day of February, in the year of our Lord one thousand, nine hundred and nineteen, at Marion County in the said State of South Carolina, in the said District, and within the jurisdiction of this Court was a dis-
12 tiller of spirits to wit whiskey, and unlawfully did carry on the business of a distiller of spirits, to wit, whisky, without having given bond, as required by law; contrary to the form of the Statute of the United States in such case made and provided, and against the peace and dignity of the United States.

Third Count, Sec. 3281, R. S. U. S.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present that Lawrence Amos, late of Marion County, in the State of South Carolina, on the eleventh day of February, in the year of our Lord, one thousand nine hundred and nineteen at Marion County, in the said State of South Carolina, in the said District, and within the jurisdiction of this Court, was a distiller of spirits, to wit, whiskey, and unlawfully did carry on the business of a distiller of spirits to wit: whiskey, with intent to defraud the United States of the tax imposed by law on the spirits, distilled by him, the said Lawrence Amos, contrary to the form of the Statute of the United States in such case made and provided, and against the peace and dignity of the United States.

Fourth Count, Sec. 3279, R. S. U. S.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present that Lawrence Amos, late of Marion County, in the State of South Carolina, on the eleventh day of February, in the year of our Lord, one thousand nine hundred and nineteen, at Marion County, in the said State of South Carolina, in the said District, and within the jurisdiction of this Court, unlawfully did work in a certain distillery, to wit, a distillery for the production of spirits, to wit whiskey, on the outside of which there was not placed and kept conspicuously a sign, exhibiting in plain and legible letters not less than three inches in length, painted in oil colors or gilded and of a proper and proportionate width, the name or firm of the distiller, with the words "Registered Distillery" as required by law; contrary to the form of the Statute of the United States in such case made and provided, and against the peace and dignity of the United States.

Fifth Count, Sec. 3296, R. S. U. S.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present, that Lawrence Amos, late of Marion County, in the State of South Carolina, on the eleventh day of February, in
13 the year of our Lord one thousand nine hundred and nineteen, at Marion County, in the said State of South Carolina, in the said District, and within the jurisdiction of this Court, unlawfully did remove and aid in the removal of certain distilled spirits, the exact quantity of the same being to the Grand Jurors aforesaid unknown, on which the tax had not been paid, as in that behalf required by law, to a place other than a distillery warehouse provided by law; contrary to the form of the Statute of the United States, in such case made and provided, and against the peace and dignity of the United States.

Sixth Count, Sec. 3296, R. S. U. S.

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present, that Lawrence Amos, late of Marion County, in the State of South Carolina, on the eleventh day of February, in the year of our Lord one thousand nine hundred and nineteen, at Marion County, in the said State of South Carolina, in the said District, and within the jurisdiction of this Court, unlawfully did conceal and aid in the concealment of certain distilled spirits, the exact quantity of the same being to the Grand Jurors aforesaid unknown, on which the tax had not been paid, as in that behalf required by law, and which said distilled spirits had been prior thereto removed to a place other than a distillery warehouse provided by law, contrary to the form of the Statute of the United States in such case made and provided, and against the peace and dignity of the United States.

FRANCIS H. WESTON,
United States Attorney.

Finding of the Grand Jury.

A true Bill.
JNO. B. GADSDEN,
Foreman Grand Jury.
March 4, 1919.

Plea.

The defendant, Lawrence Amos, upon arraignment pleads guilty, in open Court, this 8 day of March, 1919.

LAWRENCE AMOS.

14 *Minutes of Trial.*

United States District Court, Eastern District of South Carolina.

THE UNITED STATES OF AMERICA, Plaintiff,

versus

LAWRENCE AMOS, Defendant.

Saturday, March 8th, 1919.

This case having been called for trial, Mr. District Attorney F. H. Weston appeared for the Government; Mr. R. Dozier Lee appeared for the Defendant. The defendant in pro. per., upon arraignment, pleads not guilty in open court. Thereupon the following jury was duly empanelled and sworn, viz:—

B. H. Abbott, Foreman.
P. H. Tedder.
R. A. Walker.
W. C. Seagel.
Lee C. Israel.
W. O. Cain, Jr.
T. T. Truesdale.
G. W. Woodham.
J. D. Haselden.
Ralph Nebbitt.
B. R. Heyward.
W. L. Bennett.

The further hearing of this case continued to Monday morning.

Monday, March 10, 1919.

THE UNITED STATES OF AMERICA, Plaintiff,

versus

LAWRENCE AMOS, Defendant.

The hearing of this case resumed this day. Mr. Weston appears for the Government; Mr. Lee for the defendant. The defendant present, and the jury heretofore empanelled.

The following witnesses duly sworn and examined for the Government, viz:—P. J. Coleman, C. A. Rector; C. A. Rector, recalled.

Sworn and examined for the Defendant, viz:—Lawrence Amos and Willie Wright.

The hearing was then continued to tomorrow.

Tuesday, March 11th, 1919.

THE UNITED STATES OF AMERICA, Plaintiff,

VS.

LAWRENCE AMOS, Defendant.

The hearing of this case resumed this day.

Mr. Waring appears for the Government; Mr. Lee for the defendant.

The defendant present, and the jury heretofore empanelled.

The following witnesses duly sworn and examined for the Defendant, viz:—Jim Stukes, Alberta Stone, Lawrence Amos, recalled, and Harvey McFadden.

Argument by Mr. Waring for the Government, by Mr. Lee for the defendant, and by Mr. Waring in reply for the Government.

The Court then charged the jury, and they later returned into Court the following:

Verdict.

We, the jury, find the defendant guilty on the 5th and 6th Counts; not guilty on the other Counts, this 11th day of March, 1919.

B. H. ABBOTT,
Foreman.

Motion for New Trial.

Refused.

The Court thereupon imposed the following:

Sentence.

Whereupon, it is considered, ordered and adjudged by the Court that the defendant Lawrence Amos be imprisoned in the jail of Florence County for Three months and that he pay a fine of Two hundred dollars and costs of prosecution, and that he remain imprisoned in said jail until said fine and costs are paid or until he is otherwise discharged by law.

In open Court this 11th March, 1919.

HENRY A. M. SMITH,
U. S. Judge.

16 Filed May 6, 1919.

District Court of the United States for the Eastern District of South Carolina.

LAWRENCE AMOS, Plaintiff in Error,

against

THE UNITED STATES OF AMERICA, Defendant in Error.

Bill of Exceptions.

The Plaintiff in Error, Lawrence Amos, was indicted at the March Term, 1919, of the District Court for the Eastern District of South Carolina, at Florence, on an indictment charging a violation of Sections 3258, 3281, 3279 and 3296 of the Revised Statutes of the United States. Thereupon the case came on to be tried upon the 8th day of March, 1919, before the Court and a jury duly empanelled.

After the jury had been sworn but before any testimony was offered on behalf of the Government, counsel for the plaintiff in error submitted to the Court the following petition:

The District Court of the United States for the Eastern District of South Carolina, March Term, 1919, Florence, S. C.

UNITED STATES OF AMERICA

against

LAWRENCE AMOS, Defendant.

Petition to Return Private Property Unlawfully Seized.

Now comes the defendant and states that he is a citizen and resident of Clarendon County, State of South Carolina, and that he resides, owns and occupies a home at or near Paxville, in said County and State.

That on or about the 11th day of February, 1919, while defendant was absent at his daily and customary vocation, certain officers of the Government, to wit, P. J. Coleman and C. A. Rector, un-

17 lawfully and without warrant or authority so to do, forcibly entered the home of the defendant and the promises and buildings within his curtilage and then and there searched and seized certain property in said home and premises and outbuildings and this in violation of Sections Sixteen and Seventeen, Article One, of the Constitution of the State of South Carolina, and of the Fourth and Fifth Amendments to the Constitution of the United States.

That the property so unlawfully seized consists of a piece of piping, one-half inch in diameter and about five or six feet long, two half-pint or pint whiskey bottles, said to contain in part what is said to be

blockade whiskey but which in fact were empty at the time of said seizure, a grape juice quart glass bottle, said to contain blockade whiskey but the true contents of which are unknown to this defendant, and other property of said defendant.

That said property is being unlawfully and improperly held by the District Attorney, Marshal and Clerk of said Court, in violation of defendant's rights under the Constitution and amendments of the United States and of the State of South Carolina.

That said District Attorney intends and purposes to use said property above described or to offer testimony with respect thereto obtained from such unlawful entry, search and seizure, upon the trial of the above entitled cause and that by reason thereof and of the facts above set forth, defendant's rights under the Amendments aforesaid to the Constitution of the United States and the Sections of Article One aforesaid of the Constitution of the State of South Carolina, have been and will be violated unless this Court orders the return of said property or unless the District Attorney is not allowed to use the same upon said trial or to offer such testimony with respect thereto.

Wherefore defendant prays that said District Attorney
18 Marshal and Clerk be directed and required to return said property to this defendant, or that said District Attorney be denied the use of same in or as evidence or to offer such testimony upon said trial.

The above Petition was duly signed and sworn to by the defendant.

Upon a reading of said Petition by the Court and the hear- of the application the Court refused the prayer of said petition. This ruling was excepted to by Counsel for the plaintiff in error.

Thereupon the Government produced two witnesses, to wit:—

P. J. COLEMAN, Deputy Collector of Internal Revenue, testified that he with C. A. Rector, another Deputy Collector, went to the defendant's house; did not find defendant there, but found a woman who said she was the wife of defendant. He told her his business, that he was a revenue officer come to search the premises for violations of the revenue law. The woman came out and opened the store for witness, who entered; and in a barrel of peas, witness found a bottle containing not quite a half-pint of illicitly distilled whiskey; what witness called "blockade whiskey."

Witness then went into the house. The same woman told them they could search anywhere they wanted to, and on searching the house, he found two bottles under the quilt on the bed; one containing a full quart and the other a little over a quart of illicitly distilled or "blockade whiskey." This whiskey was in regular whiskey bottles, but was in fact unlawfully distilled whiskey. Witness offered in evidence a pint bottle containing whiskey; which bottle he stated was not one of the bottles found by him; but that the whiskey contained in the same was poured out of one of the two bottles that he had found in the defendant's house on the bed under the quilt as above stated.

Upon cross-examination, the witness stated that he had no

search warrant to search the house of the defendant, and the search made by him, when he found the whiskey, was
19 made in the daytime, without a search warrant, and during the absence of the defendant, who did not appear on the scene until after the search had been made.

The witness Coleman further testified that after the defendant was arrested, and whilst he was being conveyed for hearing before the United States Commissioner, defendant stated that he had tried to make some whiskey, but could not; and that the can he used for the purpose was about the place, and "if he went back and told his wife to give us the can, it was there and we could get it."

C. A. RECTOR, Deputy Collector of Internal Revenue, was also examined and testified that he was with Coleman, when the search was made, and corroborated the testimony of P. J. Coleman, that they were met by the woman, told her their business and told her they wanted first to look into the store, and she said "All right," and opened the door and after searching the store, they asked to go into the house and permission was granted; and corroborated the testimony of Coleman as to the whiskey that was found, and as to defendant's statements after arrest, when being conveyed for his hearing before the United States Commissioner.

He also corroborated the testimony of Coleman that they had no warrant for the arrest of the defendant or search warrant to search his house.

Upon the testimony of these witnesses as to search and the absence of any warrant either to arrest the defendant or to search his premises, counsel for the plaintiff in error moved that their testimony be stricken out as inadmissible; which motion was denied by the Court; and which ruling was duly excepted to by counsel for the defendant.

After all the testimony was in, the jury was charged, there being no exceptions to such charge and thereafter the jury returned a verdict of not guilty on the first, second, third and fourth counts and guilty on the fifth and sixth counts.

Thereafter a motion for a new trial was made and refused and the defendant was sentenced to imprisonment in the Flor-
20 ence County jail for a period of three months, together with a fine of Two hundred dollars and costs of the prosecution.

And said Bill of Exceptions is settled this 6th May, 1919.

HENRY A. M. SMITH, [Seal.]
U. S. District Judge.

21 Filed March 18, 1919.

In the District Court of the United States for the Eastern District of South Carolina, March Term, 1919, Florence, South Carolina.

LAWRENCE AMOS, Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA, Defendant in Error.

Assignments of Error.

It is respectfully Submitted:

1. That his Honor erred in refusing to grant the Petition of the Plaintiff in Error to return private property unlawfully seized when said petition was presented to the Court after the jury was sworn, but before any testimony was offered on the part of the Government, and when it appeared from the records of said Court in said case that the property so seized had been obtained by Revenue Officers of the Government during the search of the plaintiff's home and buildings within his curtilage, during the absence of the defendant, without having in their possession a search warrant describing the place to be searched and the property to be searched for; it being respectfully submitted that such procedure on the part of the officers of the Government was in violation of the rights of the plaintiff in error as guaranteed to him by the Fourth and Fifth Amendments of the Constitution of the United States, and in violation of Sections Sixteen and Seventeen of Article One of the Constitution of the State of South Carolina; it being respectfully submitted that said petition was presented to the Court within time.

2. That his Honor erred in admitting the testimony of the witnesses for the Government, to wit:—P. J. Coleman and C. A. Rector, over the objection of the plaintiff in Error when it appeared that their testimony was obtained by them in a search of the home and buildings within the curtilage of the Plaintiff in Error during his absence, and without a search warrant or other authority, describing the places to be searched and the property to be searched for;
22 it being respectfully submitted that such testimony was in violation of the rights of the Plaintiff in Error guaranteed to him by the Fourth and Fifth Amendments of the Constitution of the United States and by Sections Sixteen and Seventeen of Article One of the Constitution of the State of South Carolina.

3. That his Honor erred in refusing the motion of the Plaintiff in Error to strike from the record of the case the testimony of the witnesses for the Government, to wit:—P. J. Coleman and C. A. Rector, after they had testified on cross examination that the testimony offered by them relating to parts of a still, mash, and spent

beer and three bottles of contraband or blockade whiskey was property and evidence obtained by them in a search of the home of the Plaintiff in Error, and of the outbuildings within his curtilage, during his absence, without a Search Warrant, or other authority, describing the place or places to be searched and the property to be searched for; it being respectfully submitted that such testimony was inadmissible and in violation of the rights of the Plaintiff in Error guaranteed to him by the Fourth and Fifth Amendments to the Constitution of the United States and of Sections Sixteen and Seventeen, Article One of the Constitution of the State of South Carolina.

LEE AND MOISE,
Attorneys for the Plaintiff in Error.

23 *Stipulation for Clerk to Prepare Record.*

Filed May 6th, 1919.

In the District Court of the United States for the Eastern District of South Carolina.

LAWRENCE AMOS, Plaintiff in Error,

versus

THE UNITED STATES OF AMERICA, Defendant in Error.

It is hereby stipulated and agreed that the Clerk of this Court shall make up a transcript of the record in the above styled cause, and transmit the same to the clerk of the United States Supreme Court at Washington, D. C.

LEE AND MOISE,
Counsel for Plaintiff in Error.
FRANCIS H. WESTON,
U. S. Attorney,
Counsel for Defendant in Error.

May 6th, 1919.

24 *Memorandum.*

Petition for Writ of Error filed March 18, 1919.
Order allowing same, filed March 18, 1919.
Writ of Error issued and filed March 18, 1919.
Copy lodged for adverse party March 18, 1919.
No bond for costs.
Citation filed March 18, 1919.
Service upon Attorney General United States, March 28, 1919.

Clerk's Certificate.

UNITED STATES OF AMERICA,
Eastern District of South Carolina:

In the District Court.

I, Richard W. Hutson, Clerk of the District Court of the United States for the Eastern District of South Carolina, do hereby certify that the foregoing is a true copy of the records and proceedings in the case of The United States, plaintiff, versus Lawrence Amos, defendant, together with all papers relating to the same, as agreed upon by counsel, and as appears by the records now on file in my office.

Given under my hand and seal of said Court at Charleston, S. C., in said District, this 19th day of May, Anno Domini, 1919.

[Seal United States District Court, Eastern District So. Ca.]

RICHARD W. HUTSON,
Clerk U. S. D. C., E. D. S. C.

Endorsed on cover: File No. 27,142. E. South Carolina D. C. U. S. Term No. 388. Lawrence Amos, plaintiff in error, vs. The United States of America. Filed May 31st, 1919. File No. 27,142.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1919.

No. 388.

LAWRENCE AMOS, PLAINTIFF IN ERROR,

vs.

UNITED STATES OF AMERICA, DEFENDANT IN ERROR.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF SOUTH CAROLINA.

BRIEF FOR PLAINTIFF IN ERROR.

Statement.

The plaintiff in error, who will be hereinafter referred to as the defendant, was placed on trial on March 8, 1919, in the District Court of the United States for the Eastern District of South Carolina, under an indictment containing six counts charging him with having violated sections 3258 and 3281 (two counts), 3279 and 3286 (two counts), R. S. U. S. He was found not guilty on the first four counts and guilty on the fifth and sixth counts, and this appeal is taken upon a writ of error and assignment of errors involving the application of the Fourth and Fifth Amendments of the United States Constitution.

The fifth count charged the defendant with removing and aiding in the removal of certain distilled spirits, on which the taxes had not been paid, to a place other than a distillery warehouse, and the sixth count charged the concealing and aiding in concealing such spirits.

The assignments of error, three in number, question the refusal of the presiding judge to grant the petition of the defendant, filed prior to the offering of any testimony, praying for the return to him of private property seized in an unlawful search of his home by agents of the Government and intended to be used as evidence against him; in admitting, over defendant's objection, the testimony of the witnesses for the Government and in refusing to strike out such testimony when it appeared that the same had been obtained in an unlawful search of the defendant's home.

Specification of Errors.

(1) That his honor erred in refusing to grant the petition of the defendant, presented to the court before taking the testimony in the case, to return private property seized by officers of the Government during a search of the defendant's home and buildings within his curtilage, during his absence and without his permission, when said officers did not have in their possession a search warrant describing the places to be searched and the property for which search was to be made, and when it was intended that such private property would be used by the Government as evidence against the defendant. This being in violation of the defendant's rights as guaranteed by the Fourth and Fifth Amendments of the United States Constitution.

(2) That his honor erred in admitting, over the objection of the defendant, the testimony of J. P. Coleman and C. A. Rector, revenues officers and witnesses for the Government, when it appeared that such testimony concerned private prop-

erty of the defendant and was obtained by such witnesses, as revenue officers, in an unlawful search of the defendant's home and the buildings within his curtilage, during his absence and without his permission, and without having in their possession a search warrant or other authority describing the places to be searched and the property for which search was to be made. Such testimony being with respect to a bottle, said to contain not quite a half pint of illicitly distilled whiskey found in the store of the defendant, which was in the same enclosure with the defendant's home, and two bottles, one said to contain a full quart and the other a little over a quart of such whiskey, found in the home of the defendant. This being inadmissible in evidence against the defendant and in violation of the rights of the defendant as guaranteed to him by the Fourth and Fifth Amendments to the Constitution of the United States.

(3) That his honor erred in refusing the motion of the defendant to strike from the record the testimony of the Government's witnesses, Coleman and Rector, after said witnesses had admitted that the three bottles, said to contain illicitly distilled whiskey, had been seized by them in the store and home of the defendant in a search of said premises, during his absence, by said witnesses acting as revenue officers, without having in their possession a search warrant describing the places to be searched and the property for which search was to be made. This being inadmissible as evidence against the defendant and in violation of the rights of the defendant as guaranteed by the Fourth and Fifth Amendments of the Constitution of the United States.

ARGUMENT.

While there are three assignments of error, yet, as they all raise the same question, they will be discussed together.

There can be no dispute as to the fact that the bottles of whiskey testified about by the Government's witnesses were

seized by them, as revenue officers, during the search of the defendant's store and home, during his absence and when they did not have a search warrant describing the places to be searched and the property for which search was to be made, as their authority to make such search and seizure, because the witnesses themselves admit the same. (Folio 19.) Such being the admitted fact, the testimony was clearly incompetent and should not have been admitted over defendant's objection, or, if admitted, should have been stricken out upon the defendant's motion.

Fourth Amendment United States Constitution.
Fifth Amendment United States Constitution.
Weeks *vs.* U. S., 232 U. S., 383.
Silverthorne Lumber Company *vs.* U. S., U. S. Sup. Ct. Advance Opinions, 1919-1920, page 208.

Likewise, such property having been so obtained, and it so appearing from the records of the court, the petition of the defendant should have been granted and the property returned.

Weeks *vs.* U. S., *supra.*
Silverthorne Lumber Company *vs.* U. S., *supra.*

Such evidence being the only testimony in the record upon which a verdict of guilty on the fifth and sixth counts of the indictment could stand, the failure of the court to order a return of the property to the defendant and the admission of the testimony by the court was highly prejudicial of the rights of the defendant. A lawful manner to have obtained such evidence is provided for by the Fourth Amendment of the United States Constitution.

R. DOZIER LEE,
CHARLES A. DOUGLAS,
Attorneys for Plaintiff in Error

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In the Supreme Court of the United States.

OCTOBER TERM, 1920.

LAWRENCE AMOS, PLAINTIFF IN ERROR,
v.
UNITED STATES OF AMERICA. } No. 114.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF SOUTH CAROLINA.

BRIEF ON BEHALF OF THE UNITED STATES.

STATEMENT OF CASE.

The plaintiff in error was convicted on two counts, charging, respectively, the removing and concealing of distilled spirits on which the tax had not been paid in violation of Section 3296 of the Revised Statutes.

QUESTION INVOLVED.

The sole ground upon which a reversal is sought is the refusal of the trial court, upon a petition filed after the trial began, to order certain whisky and other articles claimed to have been taken from his store and house by an unlawful search and seizure, returned to the plaintiff in error, and the subsequent admission in evidence of a part of this whisky.

How the question arises.

After the jury had been sworn but before any testimony had been offered on behalf of the United States, the plaintiff in error filed a petition alleging that certain property belonging to him, viz, a piece of piping, two half-pint or pint whisky bottles said to contain what was said to be "blockade" whisky, and a quart bottle said to contain "blockade" whisky, had been unlawfully seized by certain officers of the United States and was being unlawfully held by the district attorney, marshal, and clerk in violation of plaintiff in error's constitutional rights; that the district attorney intended to use this property in evidence against him at the trial of said indictment. It prayed that the district attorney, marshal, and clerk be required to return said property to him and that the district attorney be denied the use of the same as evidence. (R. 10, 11.) It appears that the petition was read and the application heard and denied. It does not appear, however, what, if any, evidence was offered in support of the application. Nor does it appear whether it was denied for want of supporting evidence or because not seasonably made. (R. 11.)

The trial proceeding, two deputy collectors of internal revenue testified that they searched plaintiff in error's store and house, with the consent of his wife, that they found "blockade" whisky concealed in both places, which they seized; that upon plaintiff in error's arrest he admitted he had tried to make whisky and that the can he had used was

about the place and would be given to them by his wife if they went back. They admitted that they had no search warrant. Part of the whisky seized in the house was admitted in evidence. The remainder of the property mentioned in the petition was not offered. The plaintiff in error moved *that the testimony of these two witnesses be stricken out as inadmissible*, but the motion was denied. (R. 11, 12.)

ARGUMENT.

I.

The petition was properly overruled because not filed until after the trial had begun.

As stated above, the petition was not filed until after the trial jury had been empaneled and sworn. It is settled beyond question that the trial had therefore begun when the application was made,[1] and the question is whether a petition for the return of goods claimed to have been unlawfully seized may, consistently with the decisions of this court, be made after the trial has begun. In *Weeks* v. *United States*, 232 U. S. 383, 388, 393, it appeared that the defendant *before the trial* presented a petition for the return of papers which was granted in part and denied in part, with a reservation by the court of the right to pass on the pertinency of the papers at a later date. Subsequently, after the jury had been sworn but before any testimony was offered, he "again

[1] *Hopt* v. *Utah*, 110 U. S. 575; *Lewis* v. *United States*, 146 U. S. 370, 375, 376; *Caples* v. *State*, 3 Okla. Cr. 72, 93–95; *State* v. *Jackman*, 31 Nev. 511; *Wills* v. *Com.*, 85 Ky. 68, 71; *State* v. *Maddox*, 90 Kans. 739 and cases cited.

urged his petition" for the return of the rest of the property, which was denied. It will be observed, therefore, that what occurred in the Weeks case, after the jury was sworn, was merely a renewal of an application as to which the trial court had previously not only been fully advised, but in reality rendered its decision by denying the return of those papers which were pertinent. And that this court considered the earlier application the important—if not vital—one is shown by the opinion where it is said (232 U. S. 393):

> The accused, *without awaiting his trial, made timely application to the court* for an order for the return of these letters, as well as other property. This application was denied, the letters retained, and put in evidence, after a further application at the beginning of the trial, both applications asserting the rights of the accused under the fourth and fifth amendments to the Constitution. [Italics ours.]

The opinion later proceeds to consider and explain the case of *Adams* v. *New York*, 192 U. S. 585. The Adams case (it is stated) was based on the principle laid down in 1 Greenleaf, §254a, viz, that courts "in the course of a trial" would not try the issue as to how competent testimony had been procured (232 U. S. 395); and again (232 U. S. 396) the doctrine is approved—

> that a court will not *in trying a criminal cause* permit a collateral issue to be raised as to the source of competent testimony.

Since, therefore, this court in the Weeks case clearly pointed out that the petition in that case had been filed (and in effect decided) before the trial began, and affirmed the rule of the Adams case that such an issue can not be raised in the course of the trial, or while the court is trying the cause, it follows necessarily that a petition for return of goods, seeking to raise the issue that they have come into the possession of the prosecuting officers through an unreasonable search and seizure, filed after the trial has begun, is too late. It can surely make no difference that the seized articles themselves had not yet been offered in evidence. The trial would be just as much hindered and delayed by the tender of this collateral issue after the jury was sworn and officiating as it would be at any later period.

II.

There was no error in the admission of the evidence unless the previous action of the court in refusing to return the seized articles was erroneous. And the ruling of the court in that regard is not open to review on this record.

Even if it be assumed that the petition in this case was seasonably filed so that the court could properly have entertained it, the record still discloses no ground upon which the judgment can be reversed. As shown above, it is well settled that evidence, even when it has been obtained by an unlawful search and seizure, can not be excluded if otherwise competent, merely upon objection made when it is offered in the progress of the trial. The remedy of the person

aggrieved in such a case is to petition the court for the return of property or papers so seized and have his petition acted on before proceeding with the trial. If the court erroneously denies the prayer of the petition, and as a result property or papers which should have been returned are subsequently used in evidence, a conviction so obtained is subject to be reversed. The ground of reversal, however, is that upon a seasonable application the court refused to return articles unlawfully taken. This in connection with the subsequent use of such articles in evidence is held to be a violation of the defendant's constitutional rights. The mere presentation of a petition, even when seasonably presented, however, does not entitle the defendant to have his property returned.

The petition must be supported by evidence, or at least the offer of evidence, before the judge can be put in error for denying its prayer. If the ruling of the judge upon the case presented to him under the petition be not erroneous, then of course the evidence is admissible on the trial, and its admission is not error. Although a petition may be sufficient on its face, if the evidence offered in support of it shows that its allegations are not true, or fails to show that they are true, the judge rules correctly when he denies the prayer. If the defendant does not offer to support his petition by proof, he can not complain if it is overruled. And if at the time the petition is presented to the court for a hearing he fails to make out his case, he can not of course complain if the court, when the evidence is offered in the progress

of the trial, refuses to stop the trial and retry the issue which could have been properly tried under his petition. It is obvious, therefore, that before this court can say that a judge was in error in denying the prayer of a petition of this kind, it must have before it the record upon which the trial judge acted when he denied the petition. Certainly, this court can not say that the trial court was in error unless it knows what was offered in the court below in support of the petition. In the present case the record is wholly silent on this point. It merely says that the petition was read and the application heard and denied. If the petitioner contented himself with reading his petition and asking that its prayer be granted, and for aught the record shows this is what he did, the judge acted properly in overruling the petition. If he offered proof in support of his petition, and the trial judge regarded the proof as insufficient, it was his duty to overrule the petition. In that event, a review of his action could not be had without bringing to this court the evidence upon which he acted. That has not been done. The only evidence set out in the record is the testimony of certain witnesses in the progress of the trial of the criminal case. It is respectfully submitted, therefore, that this court can not say whether the trial judge acted properly or erroneously in overruling the petition. And unless this action can be said to be erroneous, there was certainly no error in admitting the evidence offered on the trial.

III.

No prejudice accrued to plaintiff in error from the denial of the petition.

It is clear from the decision in *Weeks* v. *United States*, 232 U. S. 383, that the denial of the petition for the return of the seized articles can not be assigned as error *in the criminal case* unless the articles were in some way used improperly against the defendant at the trial. Perhaps the failure of the judge to order their return might be reached in some other proceeding, such as a mandamus, but, for example, if the articles were not used *in any way* at the trial, it is clear that the defendant was not prejudiced *in that proceeding* by the failure to return them, and can not, therefore, *in that proceeding* properly take exception to the action of the court in denying the petition for their return. This, we assume, will be admitted. But the same conclusion necessarily follows if it appear at the trial that the defendant waived (as he may) his constitutional right to object to the search and seizure. In such event, he is, in the eye of the law, no more prejudiced by the denial of the petition than if the articles had not been used against him at all. Such is the case at bar. The bill of exceptions (R. 11, 12) shows, not only that, when the revenue officers stated their character and purpose, the wife of the plaintiff in error, who, in his absence, was in charge of both his store and his home, consented to and aided their search, but also that the plaintiff in error himself

(who appeared on the scene after the search had been made (R. 12)) told them afterwards that the can he had used to make whisky was somewhere about the place, and if he went back and told his wife to give the officers this can they could get it. These actions of the wife and of the plaintiff in error himself, both having full knowledge of the situation and no force or coercion being used, clearly constituted a waiver of the right of plaintiff in error, if any he had. The case in this aspect can not be distinguished from *Commonwealth* v. *Tucker*, 189 Mass. 457, 470; *Grim* v. *Robinson*, 31 Neb. 540, 542, 543; *Smith* v. *McDuffee*, 72 Oregon, 276, 286, 287; and *State* v. *Griswold*, 67 Conn. 290, 304, 305, 308, 311.

The bill of exceptions does not contain all the evidence, e. g., it appears that the plaintiff in error testified on his own behalf. (R. 9.) Nor does it contain the charge of the court. We have a right to presume that upon all the testimony it clearly appeared that the revenue officers entered plaintiff in error's premises, not unlawfully by a trespass, but by the invitation and with the consent of plaintiff in error and his wife acting as his representative in his absence. The entry and search, therefore, were entirely lawful, and no claim is (or at any rate can be) made that, if the entry and search were lawful, the seizure of tax contraband articles without a warrant is not entirely reasonable, and therefore not affected by the fourth amendment even if the invitation and consent did not extend to the seizure as well as to the search.

Moreover, it should be especially noted that, according to the bill of exceptions (R. 11), the only use made of the seized articles was to admit in evidence a portion of the whisky. *To this admission the plaintiff in error made no objection.* It was not until the testimony of the revenue officers was all in that he moved to exclude all of it, although portions of it had no bearing on the question of an unreasonable search and seizure. This action of plaintiff in error constituted a clear waiver, in the most formal manner, of his right to object to the manner in which the whisky had been obtained.

CONCLUSION.

The judgment of the trial court should be affirmed.

WILLIAM L. FRIERSON,
Solicitor General.
W. C. HERRON, *Attorney.*

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SUPREME COURT OF THE UNITED STATES.

No. 114.—October Term, 1920.

Lawrence Amos, Plaintiff in Error, vs. The United States. } In Error to the District Court of the United States for the Eastern District of South Carolina.

[February 28, 1921.]

Mr. Justice Clarke delivered the opinion of the Court.

The plaintiff in error, whom we shall designate defendant as he was in the court below, was tried on an indictment containing six counts. He was found not guilty on the first four counts, but guilty on the fifth, which charged him with having removed whisky on which the revenue tax had not been paid to a place other than a Government warehouse, and also on the sixth, which charged him with having sold whisky on which the tax required by law had not been paid.

After the jury was sworn, but before any evidence was offered, the defendant presented to the court a petition, duly sworn to by him, praying that there be returned to him described private property of his which it was averred the District Attorney intended to use in evidence at the trial and which had been seized by P. J. Coleman and C. A. Rector, officers of the Government, in a search of defendant's house and store "within his curtilage", made unlawfully and without warrant of any kind, in violation of his rights under the Fourth and Fifth Amendments to the Constitution of the United States.

Upon reading of this petition and hearing of the application it was denied, and, exception being noted, the trial proceeded.

Coleman and Rector were called as witnesses by the Government and testified: that as deputy collectors of internal Revenue, they went to defendant's home and, not finding him there, but finding a woman who said she was his wife, told her that they were revenue officers and had come to search the premises "for violations of the

revenue law"; that thereupon the woman opened the store and the witnesses entered, and in a barrel of peas found a bottle containing not quite a half-pint of illicitly distilled whisky which they called "blockade whisky"; and that they then went into the home of defendant and on searching found two bottles under the quilt on the bed, one of which contained a full quart and the other a little over a quart of illicitly distilled whisky. The Government introduced in evidence a pint bottle containing whisky, which the witness Coleman stated "was not one of the bottles found by him, but that the whisky contained in the same was poured out of one of the two bottles that had been found in defendant's house on the bed under the quilt, as stated." On cross-examination both witnesses testified that they did not have any warrant for the arrest of the defendant, nor any search-warrant to search his house, and that the search was made during the daytime, in the absence of the defendant, who did not appear on the scene until after the search had been made.

After these two Government witnesses had described how the search was made of defendant's home without warrant either to arrest him or to search his premises, a motion by counsel to strike out their testimony was denied and exception noted.

This statement shows that the trial court denied the petition of the defendant for a return of his property, seized in the search of his home by Government agents without warrant of any kind, in plain violation of the Fourth and Fifth Amendments to the Constitution of the United States, as they have been interpreted and applied by this Court in *Boyd* v. *United States*, 116 U. S. 616, in *Weeks* v. *United States*, 232 U. S. 383, and in *Silverthorne Lumber Company* v. *United States*, 251 U. S. 385, and also denied his motion to exclude such property and the testimony relating thereto given by the Government agents after both were introduced in evidence against him, when he was on trial for a crime as to which they constituted relevant and material evidence, if competent.

The answer of the Government to the claim that the trial court erred in the two rulings we have described is, that the petition for the return of defendant's property was properly denied because it came too late when presented after the jury was empaneled and the trial, to that extent, commenced, and that the denial of the

motion to exclude the property and the testimony of the Government agents relating thereto, after the manner of the search of defendant's home had been described, was justified by the rule that in the progress of the trial of criminal cases courts will not stop to frame a collateral issue to inquire whether evidence offered, otherwise competent, was lawfully or unlawfully obtained.

Plainly the questions thus presented for decision are ruled by the conclusions this day announced in No. 250, *Felix Gouled* v. *The United States.*

There is nothing in the record to indicate that the allegations of the petition for the return of the property, sworn to by the defendant, were in any respect questioned or denied, and the report of the examination and appropriate cross-examination of the Government's witnesses, called to make out its case, shows clearly the unconstitutional character of the seizure by which the property which it introduced was obtained. The facts essential to the disposition of the motion were not and could not be denied, they were literally thrust upon the attention of the Court by the Government itself. The petition should have been granted but it having been denied the motion should have been sustained.

The contention that the constitutional rights of defendant were waived when his wife admitted to his home the Government officers, who came, without warrant, demanding admission to make search of it under Government authority, cannot be entertained. We need not consider whether it is possible for a wife, in the absence of her husband, thus to waive his constitutional rights, for it is perfectly clear that under the implied coercion here presented, no such waiver was intended or effected.

It results that the judgment of the District Court must be reversed and the case remanded for further proceedings in accordance with this opinion.

Reversed.

A true copy.

Test:

Clerk Supreme Court, U. S.